

ENVIRONMENTAL JUSTICE COALITION FOR WATER

PO Box 188911
Sacramento, CA 95818-8911



Tel: (916) 432-EJCW (3529)
www.ejcw.org



CALIFORNIA SAN JERARDO COOPERATIVE, INC.

May 15, 2014

Attn: Keith Wallace
California Department of Water Resources
Division of Integrated Regional Water Management
Financial Assistance Branch
Post Office Box 942836
Sacramento, CA 94236

Re: Department of Water Resources (DWR) Integrated Regional Water Management (IRWM) Guidelines & Proposal Solicitation Package (PSP) Comments

Dear Mr. Wallace,

Environmental Justice Coalition for Water (EJCW) is a statewide coalition of grassroots groups and intermediary organizations building a collective, community-based movement for democratic water allocation, management, and policy development in California. EJCW empowers low-income communities and people of color throughout California to advocate for clean, safe, and affordable water for their communities. We envision all communities throughout California having access to safe and affordable water, clean rivers, streams, and bays for personal, cultural, ceremonial, and recreational uses.

Our organizations work within various IRWM regions throughout the state as advocates for disadvantaged communities (DACs) and tribal entities. We have experience in a variety of planning and implementation efforts and would like to provide the expertise gained from that to provide comments on the Draft PSP and Guidelines.

Human Right to Water

The Human Right to Water law states that every human has the right to clean, affordable, and accessible water for human consumption, sanitary, and cooking purposes. As our experience working with DACs demonstrates, Human Right to Water issues are present in any community where individuals are struggling to access and/or afford clean water, which means that Human Right to Water is as relevant in urban communities as in rural

communities. While we appreciate DWR's effort to integrate this policy into this funding program, we find the implementation problematic on many fronts.

The 10% funding set aside for DACs does not apply to this round, and inconsistent with previous rounds, it is not clear that DWR is granting applicants additional points for addressing a critical drinking water or wastewater needs of DACs as part of this round. Because Human Right to Water address affordability and accessibility in addition to quality, the policy is actually more inclusive than just projects that address a critical drinking water or wastewater need. Therefore, the one to three points available for addressing the Human Right to Water are not *additional* points, but actually points granted in lieu of the points and set aside available in previous rounds. Specifically, the 10% set aside was pretty much the only leverage DACs had in many IRWM regions to advocate for their inclusion in an application, and now this leverage is no longer available.

Moreover, we need more clarity on how the points will be allocated and what criteria DWR will use to evaluate how a project addresses the Human Right to Water. Is one "Human Right to Water" project equivalent to exactly one point? If so, this may in practice reduce the influence of including DAC projects on the application score rather than bolster that influence. Because of IRWM region's reluctance to include DAC projects, advocating for the inclusion of even one DAC project is already difficult in many regions. We feel that a single point per project may not be enough leverage to induce IRWM regions to include DAC projects. Also, under DWR's understanding, does a project that addresses the Human Right to Water necessarily mean a DAC project? Like we mentioned before, the Human Right to Water extends beyond projects that address a critical drinking water or wastewater need of DACs. This should be reflected in DWR's criteria.

Recommendation:

Reinstate the 10% set aside for DAC projects. **In addition**, provide two points for inclusion of a project that addresses the Human Right to Water, and one point for every "Human Right to Water" project thereafter.

Conservation Measures that are Not Locally Cost Effective

IRWM regional stakeholders participating in the Roundtable of Regions Call and other conversations with DWR have communicated to us that rebate and outreach programs while eligible will not be competitive (i.e. score low). This was not clear from the beginning, and undermines efforts to support sustainable drought resiliency. Small rural communities need additional funding for conservation, rebate, and outreach programs, which in most cases are not provided by their small water systems. In the GMC IRWM region, DAC stakeholders spent months developing water conservation, rebate, and gray water projects in an effort to reduce their own water use and address local drought challenges. Now these DACs and the stakeholders that collaborated with DACs on these projects are being asked to withhold their projects from consideration. Many of the drought impacts the state is currently experiencing could have been prevented through appropriate investment in conservation measures, such as those that are being proposed by DACs and other non-profits invested in water conservation. By promoting and investing in such conservation measures, DWR is contributing to the next drought crisis.

Recommendation:

Allow an exemption for conservation programs geared toward DACs.

Provide Immediate Regional Drought Preparedness

EJCW is concerned that exclusion of "drought emergency response actions, such as trucking of water or lowering well intakes," may have negative impacts on DACs most vulnerable to the drought, many of which need assistance with lowering well intakes and pumps. DWR may be underestimating the need for this sort of funding. There is already a long line of projects trying to access existing funding sources for emergency response actions. In the Tulare Lake Basin, Self Help Enterprise has shown interest in trying to access IRWM money through one of the local IRWM regions to establish a grant/loan program for private well owner communities currently

ENVIRONMENTAL JUSTICE COALITION FOR WATER

PO Box 188911
Sacramento, CA 95818-8911



Tel: (916) 432-EJCW (3529)
www.ejcw.org

impacted by the drought. While such a project is consistent with the intent of this criteria, namely providing immediate regional drought preparedness, the language associated with this criteria may get in the way of having this project included in a final application because the local IRWM region may think it is not eligible.

Recommendation:

DWR should reconsider their drought preparedness criteria to allow for a broader range of projects, including those that are currently considered emergency response actions.

No “by funding area” allocation

DWR established Funding Areas so that applications could be evaluated within the context of their region, not statewide. DWR is encouraging a statewide competition for funding by not capping the amount a region could be awarded in this round beyond the amount of their Funding Area’s remaining balance. IRWM regions with more resources capable of producing stronger applications, specifically given the circumstances, could absorb all \$200 million available, thereby leaving certain funding area’s without a grant award during this round.

Another possible consequence is that one IRWM region absorbs its Funding Area’s entire remaining balance within this Drought Round. IRWM regions within that Funding Area wouldn’t be eligible to participate in a future funding round, effectively excluding non-drought specific projects such as DAC wastewater and flooding projects. Changing the priorities of the IRWM program so late in the process undermines years of work from some communities, which have been engaged in the IRWM planning process for years.

Recommendation:

Several IRWM regions, including the Central Coast, have advocated for a cap on each Funding Area’s allocation in this round. We support the recommendation proposed by many other IRWM regions and ask that DWR caps each Funding Area’s allocation at 50% of their remaining balance.

Application Costs

The highly technical and time-consuming nature of the solicitation process dissuades many DACs and even small environmental non-profits from engaging in the process. Small DAC drinking and wastewater systems with few to no staff often cannot commit to the high demands on personnel time typical of the IRWM grant process. Project proponents must be continuously present throughout the solicitation process to advocate for inclusion of their project, keep abreast of additional requirements or changing timelines, and respond to ongoing requests for documentation, specifically during the development of the IRWM Implementation Grant application.

We appreciate DWR’s efforts to simplify the Implementation Grant application. Specifically, removal of the economic benefit analysis will significantly reduce application costs for project proponents. In the past some DAC project proponents have been urged by their region to pursue a cost benefit analysis in lieu of the cost effectiveness analysis out of the perception that doing so would bolster the application package as a whole.

However, many DACs may still be priced out of the IRWM grant program because they do not have the funds and/or personnel to respond to application needs. In many regions a single organization or consulting entity assumes the responsibility of consolidating the region’s selected projects into a single Implementation Grant

application. Project proponents must then be willing to absorb a portion of the cost of this service. Around the state, this cost can range from \$2,000 to \$20,000 per project proponent. DACs are often excluded at this point because they cannot come up with the cost of submitting an application. Other funding programs, such as the State Revolving Funds, contract with technical service providers to prepare these often technically complex applications on behalf of DACs. Without such a structure within the IRWM grant program, DACs must rely on willing “sponsors” to cover application costs. DACs without a “fiscal” sponsor do not have the financial capacity to compete with institutional stakeholders.

This is not the first time that EJCW has expressed these concerns to DWR, but the Department has yet to properly address them. Instead of developing an effective and system wide response to DACs inability to “pay-to-play,” DWR continues to rely on the generosity of more resourced IRWM participants willing to sponsor a DAC project. This band-aid solution is not available in many regions, particularly in rural IRWMs where most stakeholders operate on tight and often grant dependent budgets.

Simplifying the application addresses this burden to some extent, but it does not result in a level playing field for disadvantaged communities. DACs are still at a technical, financial, and political disadvantage in the IRWM solicitation process. The Human Right to Water declares everyone’s right to clean water *without* discrimination. When certain communities don’t have the capacity to engage in the IRWM grant program, the outcomes can be considered discriminatory. Ultimately, DWR must develop a systematic approach to the issue DAC’s inability to finance their participation in the IRWM grant program.

Recommendation:

DWR should reward and/or incentivize the provision of application writing assistance to DACs by IRWM regions. Many regions are already providing this service to DACs through in-kind technical assistance. While stakeholders in other regions have shown an interest in providing this service, they do not have the resources or personnel to do so. DWR could incentivize in-kind technical assistance and grant application writing for DACs by subtracting the value of those services from the provider entity’s matching funds requirement where that provider is itself a project proponent, and/or reimburse technical assistance providers through the existing reimbursement process.

Reimbursable Costs

According to the PSP, “...reasonable costs directly associated with grant application preparation, which may include the costs of conduction income surveys for the purpose of establishing disadvantaged community status,” are considered reimbursable. However, reimbursement is only available for project proponents successful in securing IRWM funding. DAC project proponents do not have a mechanism by which to recover costs of applying (often very high) if their application is not successful. DACs do not have the funds to spend on these applications, especially without some assurance of return on their investment. During Round 2, Greater Monterey County IRWM DAC project proponents spent thousands of dollars on the IRWM application which ultimately went unfunded and got these communities no closer to clean drinking water than they had been before the solicitation process. Even so, reimbursements function under the assumption that project proponents have the initial capital to front the cost of developing an application, and if successful, implement a project. DACs do not have the capital to front costs and need regular reimbursements, start-up funds and a provision for reimbursement of DAC costs for construction period financing.

Furthermore, the reimbursement process is slow and often leaves DAC grant recipients on the hook for costs for several years after the grant has been approved. Time in between when a grant is officially awarded and when costs can be reimbursed is unnecessarily protracted and DACs struggle to keep stakeholders and/or contractors engaged during processing time. Construction cost escalation may have occurred and DWRs policy for disallowing contingency funding does not provide for a method to cover such costs.

ENVIRONMENTAL JUSTICE COALITION FOR WATER

PO Box 188911
Sacramento, CA 95818-8911



Tel: (916) 432-EJCW (3529)
www.ejcw.org

Also DWR's policy on requiring project applicants to demonstrate cash flow capabilities, and specifically the 3-year audit requirement to demonstrate that the applicant has funding to pay for upfront costs, places a disproportionate impact on DACs and potentially excludes them from the IRWM process altogether. DACs by the very criteria used to define them do not have the financial capacity and/or cash flow to finance projects through DWR's often protracted reimbursement process.

Recommendation:

Eliminate the 3-year audit for DACs and provide start up funds for DACs so that they can implement their projects, without resorting to soliciting loans from other institutions.

Project Administration

DACs generally do not have experience in grant administration and project management and are at a disadvantage in navigating the complexities of DWR's contract and grant administration procedures. DACs that are unfamiliar with complex grant programs are unprepared for the level of work or costs that are attributable to the IRWM program, and may require the assistance of the project engineer or consultants to navigate the DWR process. The current restriction of administrative expenses to five percent of the grant amount places an undue burden on limited DAC resources if additional administrative assistance from consultants is necessary. In recognition of the impact of the administrative burden, the GMC IRWM Region Round 2 applicant conditioned participation on their ability to capture the entire allowable amount. DACs would not have been able to continue to participate in this funding opportunity unless there was other resources for grant administration that could be made available. Moreover, Greater flexibility in program administration is needed. For example, if a component proposed in the IRWM application and developed more fully in the detailed workplan description is determined to be ineligible by DWR, it should be possible to substitute an eligible activity.

Recommendation:

Increase the allowable allocation for administrative costs for DACs to properly reflect the greater need of time and resources for these communities to engage in the IRWM grant program.

Timeline to Produce Applications and Submit IRWMP

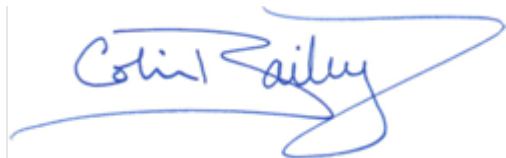
The Drought Round took many regions by surprise, many of which were well into preparing for the anticipated Round 3. Responding to the new set of priorities, including documentation of drought impacts and development of responsive projects will require a lot of resources and coordination from IRWM regions. As such, it does not make much sense that IRWM regions are being given less time and not more to submit their IRWM Plan and IRWM applications. Specifically, this places a heavy burden on DACs, which typically need more time and resources to develop their projects and respond to requests of information for the development of the IRWM application. DWR should have established a technical assistance program for DACs prior to asking for new projects; proceeding with a new set of priorities without such assistance places a disproportionate burden on DACs. In the Tulare Lake Basin, DACs we were able to secure some technical assistance for a few communities through Fresno State but their report won't be done until June – too late for this round of applications.

Recommendation:

We support other IRWM's regions recommendation of a 60-day period to submit applications and more time to submit IRWMP. An accelerated timeframe places a heavy burden on low-resource IRWM regions and specifically DAC project proponents, which are already challenged to prepare technically competitive applications by their local IRWM's deadlines.

We appreciate and thank you for providing us the opportunity to comment on the Draft Guidelines and PSP utilizing the lens of how this Solicitation impacts disadvantaged communities.

Sincerely,



Colin Bailey, J.D.
Executive Director
Environmental Justice Coalition for Water
colin@ejcw.org



Jennifer Clary
Water Policy Analyst
Clean Water Action
jclary@cleanwater.org



Omar Carrillo
Policy Analyst
Community Water Center
Omar.carrillo@communitywatercenter.org



Jeanette Pantoja
Water and Land Use Community Worker
California Rural Legal Assistance
jpantoja@crla.org



Horacio Amezcuita
San Jerardo Cooperative
horacioamezcuita@yahoo.com



Vern Goehring
Food & Water Watch
Verngoehring.com



Noe Paramo, J.D.
Central Valley Partnership Project Director
California Rural Legal Assistance Foundation

ENVIRONMENTAL JUSTICE COALITION FOR WATER

PO Box 188911
Sacramento, CA 95818-8911



Tel: (916) 432-EJCW (3529)
www.ejcw.org